

entity to build its own system.

(vii) The parties may mutually agree to modify any requirements or obligations imposed by these provisions, except for the requirement that an educational entity use at least 20 hours per week on a channel of a wireless cable licensee before requesting access to an additional channel.

§ 27.1202 Cable/BRS Cross-ownership.

(a) Initial or modified authorizations for BRS stations may not be granted to a cable operator if a portion of the BRS station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system and the cable operator will be using the BRS station as a multichannel video programming distributor (as defined in Section 76.64(d) of this chapter). No cable operator may acquire such authorization either directly, or indirectly through an affiliate owned, operated, or controlled by or under common control with a cable operator if the cable operator will use the BRS station as a multichannel video programming distributor.

(b) No licensee of a station in this service may lease transmission time or capacity to a cable operator either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with a cable operator, if a portion of the BRS station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system the cable operator will use the BRS station as a multichannel video programming distributor.

(c) Applications for new stations, station modifications, assignments or transfers of control by cable operators of BRS stations shall include a showing that no portion of the PSA of the BRS station is within the portion of the franchise area actually served by the cable operator's cable system, or of any entity indirectly affiliated, owned, operated, controlled by, or under common control with the cable operator. Alternatively, the cable operator may certify that it will not use the BRS station to distribute multichannel video programming.

Note 1: In applying the provisions of this section, ownership and other interests in BRS licensees or cable television systems will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate BRS licensee or cable television system will be cognizable;

(b) Investment companies, as defined in 15 U.S.C. § 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate BRS licensee or cable television system, or if any of the officers or directors of the BRS licensee or cable television system are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(c) Attribution of ownership interests in a BRS licensee or cable television system that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this

multiplication. For purposes of paragraph (i) of this note, attribution of ownership interests in a BRS licensee or cable television system that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph (i) of this note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1×0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable. For purposes of paragraph (i) of this note, X's interest in "Licensee" would be 15% (0.6×0.25) and A's interest in "Licensee" would be 1.5% ($0.1 \times 0.6 \times 0.25$). Neither interest would be attributed under paragraph (i) of this note.]

(d) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant BRS licensee or cable television system are subject to said trust.

(e) Subject to paragraph (i) of this note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the BRS or cable television activities of the partnership and the licensee or system so certifies. An interest in a Limited Liability Company ("LLC") or Registered Limited Liability Partnership ("RLLP") shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the BRS or cable television activities of the partnership and the licensee or system so certifies.

(2) For a licensee or system that is a limited partnership to make the certification set forth in paragraph (f)(1) of this note, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the BRS or cable television activities of the partnership. For a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (f)(1) of this note, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the BRS or cable television activities of the LLC or RLLP. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the BRS or cable television businesses of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the licensee or system seeking installation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(g) Officers and directors of a BRS licensee or cable television system are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of BRS or cable television service, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a BRS licensee or cable television system, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the BRS licensee or cable television system subsidiary, and a statement properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a BRS licensee or cable television system shall not be attributed with ownership of these entities by virtue of such status.

(h) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through "passive investors" is equal to or exceeds 20 percent; or

(2) The sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (h)(1) of this note plus the sum of the interests computed under paragraph (h)(2) of this note is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and (f) of this note, the holder of an equity or debt interest or interests in a BRS licensee or cable television system subject to the BRS/cable cross-ownership rule ("interest holder") shall have that interest attributed if:

(1) The equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that BRS licensee or cable television system; and

(2) The interest holder also holds an interest in a BRS licensee or cable television system that is attributable under paragraphs of this note other than this paragraph (i) and which operates in any portion of the franchise area served by that cable operator's cable system.

(j) The term "area served by a cable system" means any area actually passed by the cable operator's cable system and which can be connected for a standard connection fee.

(k) As used in this section "cable operator" shall have the same definition as in § 76.5 of this chapter.

Note 2: The Commission will entertain requests to waive the restrictions in paragraph (a) of this section where necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service.

(d) The provisions of paragraphs (a) through (c) of this section will not apply to one BRS channel used to provide locally-produced programming to cable headends. Locally-produced programming is programming produced in or near the cable operator's franchise area and not broadcast on a television station available within that franchise area. A cable operator will be permitted one BRS channel for this purpose, and no more than one BRS channel may be used by a cable television company or its affiliate or lessor pursuant to this paragraph. The licensee for a cable operator providing local programming pursuant to a lease must include in a notice filed with the Wireless Telecommunications Bureau a cover letter explicitly identifying itself or its lessees as a local cable operator and stating that the lease was executed to facilitate the provision of local programming. The first application or the first lease notification in an area filed with the Commission will be entitled to the exemption. The limitations on one BRS channel per party and per area include any cable/BRS operations or cable/EBS operations. The cable operator must demonstrate in its BRS application that the proposed local programming will be provided within one year from the date its application is granted. Local programming service pursuant to a lease must be provided within one year of the date of the lease or one year of grant of the licensee's application for the leased channel, whichever is later. If a BRS license for these purposes is granted and the programming is subsequently discontinued, the license will be automatically forfeited the day after local programming service is discontinued.

(e) Applications filed by cable television companies, or affiliates, for BRS channels prior to February 8, 1990, will not be subject to the prohibitions of this section. Applications filed on February 8, 1990, or thereafter will be returned. Lease arrangements between cable and BRS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will also not be subject to the prohibitions of this section. Leases between cable television companies, or affiliates, and BRS station licensees, conditional licensees, or applicants executed on February 8, 1990, or thereafter, are invalid.

(1) Applications filed by cable operators, or affiliates, for BRS channels prior to February 8, 1990, will not be subject to the prohibitions of this section. Except as provided in paragraph (e)(2) below, applications filed on February 8, 1990, or thereafter will be returned. Lease arrangements between cable and BRS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will also not be subject to the prohibitions of this section. Except as provided in paragraph (e)(2) below, leases between cable operators, or affiliates, and BRS/EBS station licensees, conditional licensees, or applicants executed on or before February 8, 1990, or thereafter are invalid.

(2) Applications filed by cable operators, or affiliates for BRS channels after February 8, 1990, and prior to October 5, 1992, will not be subject to the prohibition of this section, if, pursuant to the then existing overbuild or rural exceptions, the applications were allowed under the then existing cable/BRS cross-ownership prohibitions. Lease arrangements between cable operators and BRS entities for which a lease or firm agreement was signed after February 8, 1990, and prior to October 5, 1992, will not be subject to the prohibitions of this section, if, pursuant to the then existing rural and overbuild exceptions, the lease arrangements were allowed.

(3) The limitations on cable television ownership in this section do not apply to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l) of the Communications Act.

§ 27.1203 EBS Programming Requirements.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, BRS and EBS licensees are authorized to provide fixed or mobile service, except aeronautical mobile service, subject to the technical requirements of subparts C and M of this part.

(b) Educational Broadband Service stations are intended primarily through video, data, or voice transmissions to further the educational mission of accredited public and private schools, colleges and universities providing a formal educational and cultural development to enrolled students. Authorized educational broadband channels must be used to further the educational mission of accredited schools offering formal educational courses to enrolled students, with limited exceptions as set forth in section §§ 27.1201(c) of this chapter.

(c) In furtherance of the educational mission of accredited schools, Educational Broadband Service stations may be used for:

(1) In-service training and instruction in special skills and safety programs, extension of professional training, informing persons and groups engaged in professional and technical activities of current developments in their particular fields, and other similar endeavors;

(2) Transmission of material directly related to the administrative activities of the licensee, such as the holding of conferences with personnel, distribution of reports and assignments, exchange of data and statistics, and other similar uses.

(d) Stations, including high-power EBS signal booster stations, may be licensed in the EBS as originating or relay stations to interconnect educational broadband fixed stations in adjacent areas, to deliver instructional and cultural material to, and obtain such material from, commercial and noncommercial educational television broadcast stations for use on the educational broadband system, and to deliver instructional and cultural material to, and obtain such material from, nearby terminals or connection points of closed circuit educational television systems employing wired distribution systems or radio facilities authorized under other parts of this Chapter, or to deliver instructional and cultural material to any cable television system serving a receiving site or sites which would be eligible for direct reception of EBS signals under the provisions of Section 27.1201.

§ 27.1206 Geographic Service Area.

(a) The Geographic Service Area (GSA) is either:

(1) the area for incumbent site-based licensees that is bounded by a circle having a 35 mile radius and centered at the station's reference coordinates, which was the previous PSA entitled to incumbent licensees prior to [effective date of the rules], and is bounded by the chord(s) drawn between intersection points of the licensee's previous 35 mile PSA and those of respective adjacent market, co-channel licensees;

or:

(2) the BTA that is licensed to the respective BRS BTA authorization holder subject to the exclusion of overlapping, co-channel incumbent GSAs as described in subpart (a)(1) of this rule.

(b) If the license for an incumbent BRS station cancels or is forfeited, the GSA area of the incumbent station shall dissolve and the right to operate in that area automatically reverts to the GSA licensee that held the corresponding BTA.

§ 27.1207 BTA License Authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization in each market and frequency block.

(b) Blanket licenses are granted for each market and frequency block. Blanket licenses cover all mobile and response stations. Blanket licenses also cover all fixed stations anywhere within the authorized service area, except as follows:

(1) A station would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter;

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

§ 27.1208 Service Areas.

Most BRS/EBS service areas are Basic Trading Areas (BTAs). BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38-39. The following are additional BRS or EBS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguadilla-Ponce, PR, service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

§ 27.1209 Conversion of Incumbent EBS and BRS Stations to Geographic Area Licensing.

(a) Any EBS or BRS station licensed by the Commission, other than BTA authorizations and facilities authorized pursuant to BTA authorizations, shall be considered an incumbent station.

(b) As of [insert effective date of rules], all incumbent EBS and BRS licenses shall be converted to a geographic area license. Pursuant to that geographic area license, such incumbent licensees may modify their systems provided the modified system complies with the applicable rules. The blanket license covers all fixed stations anywhere within the authorized service area, except as follows:

(1) A station would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter;

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(c) The frequencies associated with incumbent authorizations that have been cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable BTA licensee.

§ 27.1210 Remote Control Operation.

Licensed BRS/EBS stations may be operated by remote control without further authority.

§ 27.1211 Unattended Operation.

Unattended operation of licensed BRS/EBS stations is permitted without further authority. An unattended relay station may be employed to receive and retransmit signals of another station provided that the transmitter is equipped with circuits which permit it to radiate only when the signal intended to be retransmitted is present at the receiver input terminals.

§27.1212 License Term.

(a) BRS/EBS licenses shall be issued for a period of 10 years beginning with the date of grant.

(b) An initial BTA authorization shall be issued for a period of ten years from the date the Commission declared bidding closed in the MDS auction.

§ 27.1213 Designated entity provisions for BRS in Commission auctions commencing prior to January 1, 2004.

(a) Eligibility for small business provisions. For purposes of Commission auctions commencing prior to January 1, 2004 for BRS licenses, a small business is an entity that together with its affiliates has average annual gross revenues that are not more than \$40 million for the preceding three calendar years.

(b) Designated entities. As specified in this section, designated entities that are winning bidders in Commission auctions commencing prior to January 1, 2004 for BTA service areas are eligible for special incentives in the auction process. See 47 CFR 1.2110.

(c) Installment payments. Small businesses and small business consortia may elect to pay the full amount of their winning bids in Commission auctions commencing prior to January 1, 2004 for BTA service areas in installments over a ten (10) year period running from the date that their BTA authorizations are issued.

(1) Upon issuance of a BTA authorization to a winning bidder in a Commission auction commencing prior to January 1, 2004 that is eligible for installment payments, the Commission will notify such eligible BTA authorization holder of the terms of its installment payment plan. For BRS, such installment payment plans will:

(i) Impose interest based on the rate of ten (10) year U.S. Treasury obligations at the time of issuance of the BTA authorization, plus two and one half (2.5) percent;

(ii) Allow installment payments for a ten (10) year period running from the date that the BTA authorization is issued;

(iii) Begin with interest-only payments for the first two (2) years; and

(iv) Amortize principal and interest over the remaining years of the ten (10) year period running from the date that the BTA authorization is issued.

(2) Conditions and obligations. See Sec. 1.2110(f)(4) of this chapter.

(3) Unjust enrichment. If an eligible BTA authorization holder that utilizes installment financing under this subsection seeks to partition, pursuant to applicable rules, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of partition as a condition of approval.

(d) Reduced upfront payments. For purposes of Commission auctions commencing prior to January 1, 2004 for BRS licenses, a prospective bidder that qualifies as a small business, or as a small business consortia, is eligible for a twenty-five (25) percent reduction in the amount of the upfront payment

otherwise required. To be eligible to bid on a particular BTA, a small business will be required to submit an upfront payment equal to seventy-five (75) percent of the upfront payment amount specified for that BTA in the public notice listing the upfront payment amounts corresponding to each BTA service area being auctioned.

(e) *Bidding credits.* For purposes of Commission auctions commencing prior to January 1, 2004 for BRS licenses, a winning bidder that qualifies as a small business, or as a small business consortia, may use a bidding credit of fifteen (15) percent to lower the cost of its winning bid on any of the BTA authorizations awarded in the Commission BRS auctions commencing prior to January 1, 2004.

(f) *Short-form application certification; Long-form application or statement of intention disclosure.* A BRS applicant in a Commission auction commencing prior to January 1, 2004 claiming designated entity status shall certify on its short-form application that it is eligible for the incentives claimed. A designated entity that is a winning bidder for a BTA service area(s) shall, in addition to information otherwise required, file an exhibit to either its initial long-form application for a BRS station license, or to its statement of intention with regard to the BTA, which discloses the gross revenues for each of the past three years of the winning bidder and its affiliates. This exhibit shall describe how the winning bidder claiming status as a designated entity satisfies the designated entity eligibility requirements, and must list and summarize all agreements that affect designated entity status, such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, which establish that the designated entity will have both de facto and de jure control of the entity. See 47 CFR 1.2110(i).

(g) *Records maintenance.* All holders of BTA authorizations acquired in a Commission auction commencing prior to January 1, 2004 that claim designated entity status shall maintain, at their principal place of business or with their designated agent, an updated documentary file of ownership and revenue information necessary to establish their status. Holders of BTA authorizations or their successors in interest shall maintain such files for a ten (10) year period running from the date that their BTA authorizations are issued. The files must be made available to the Commission upon request.

§ 27.1214 EBS spectrum leasing arrangements and grandfathered leases.

(a) A licensee in the EBS that is solely utilizing analog transmissions may enter into a spectrum leasing arrangement to transmit material other than the educational programming defined in Sections 27.1203(b) and (c) of this subpart, subject to the following conditions:

(1) Before entering into a spectrum leasing arrangement involving material other than educational programming on any one channel, the licensee must provide at least 20 hours per week of EBS educational programming (as defined in Sections 27.1203(b) and (c) of this Chapter) on that channel, except as provided in paragraphs (a)(2) and (a)(3) of this section. An additional 20 hours per week per channel must be strictly reserved for EBS use and not used for non-EBS purposes, or reserved for recapture by the EBS licensee for its EBS educational usage, subject to one year's advance, written notification by the EBS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee. These hours of recapture are not restricted as to time of day or day of the week, but may be established by negotiations between the EBS licensee and the lessee. The 20 hours per channel per week EBS educational usage requirement and the recapture and/or reservation requirement of an additional 20 hours per channel per week shall apply spectrally over the licensee's whole actual service area.

(2) For the first two years of operation, an EBS entity may enter into a spectrum leasing arrangement involving material other than educational programming if it provides EBS educational usage for at least 12 hours per channel per week, provided that the entity does not employ channel loading technology.

(3) The licensee may shift its requisite EBS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, so that it can enter into a spectrum leasing arrangement involving full-time channel capacity on its EBS station and/or associated EBS booster stations, subject to the condition that it provide a total average of at least 20 hours per channel per week of EBS educational usage on its authorized channels. The use of channel mapping or channel loading consistent with the Rules shall not be considered adversely to the EBS licensee in seeking a license renewal. The licensee also retains the unbridgeable right to recapture, subject to six months' advance written notification by the EBS licensee to the spectrum lessee, an average of an additional 20 hours per channel per week, accounting for all recapture already exercised. Regardless of whether the licensee has educational receive sites within its GSA, the licensee may lease booster stations in the entire GSA, provided that the licensee maintains the unbridgeable right to ready recapture at least 40 hours per channel per week for EBS educational usage. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part. A licensee under this paragraph which enters into a spectrum leasing arrangement on any one of its channels to an operator may "channel shift" pursuant to and under the conditions of paragraph (d)(2) of this section.

(b) A licensee utilizing digital transmissions on any of its licensed channels may enter into a spectrum leasing arrangement to transmit material other than the educational programming defined in Sections 27.1203(b) and (c) of this subpart, subject to the following conditions:

(1) The licensee must reserve a minimum of 5% of the capacity of its channels for instructional purposes only, and may not enter into a spectrum leasing arrangement involving this reserved capacity. In addition, before leasing excess capacity, the licensee must provide at least 20 hours per licensed channel per week of EBS educational usage. This 5% reservation and this 20 hours per licensed channel per week EBS educational usage requirement shall apply spectrally over the licensee's whole actual service area. However, regardless of whether the licensee has an educational receive site within its GSA served by a booster, the licensee may lease excess capacity without making at least 20 hours per licensed channel per week of EBS educational usage, provided that the licensee maintains the unbridgeable right to recapture on one months' advance notice such capacity as it requires over and above the 5% reservation to make at least 20 hours per channel per week of EBS educational usage.

(2) The licensee may shift its requisite EBS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, and may shift its requisite EBS educational usage onto channels not authorized to it, but which are included in the wireless system of which it is a part ("channel shifting"), so that it can enter into a spectrum leasing arrangement involving full-time channel capacity on its EBS station, associated EBS booster stations, and/or EBS response stations and associated response station hubs, subject to the condition that it provide a total average of at least 20 hours per licensed channel per week of EBS educational usage. The use of channel mapping, channel loading, and/or channel shifting consistent with the Rules shall not be considered adversely to the EBS licensee in seeking a license renewal. In addition, an EBS entity receiving interference protection will continue to receive such protection if it elects to swap channels with another EBS or BRS station.

(c) All spectrum leasing arrangements involving EBS spectrum must afford the EBS licensee an

opportunity to purchase or to lease EBS equipment in the event that the spectrum leasing arrangement is terminated as a result of action by the spectrum lessee.

(d) All leases of current EBS spectrum entered into prior to **[insert effective date of this rule]** and in compliance with leasing rules formerly contained in Part 74 of this chapter may continue in force and effect, notwithstanding any inconsistency between such leases and the rules applicable to spectrum leasing arrangements set forth in this chapter. Such leases entered into pursuant to the former Part 74 rules may be renewed and assigned in accordance with the terms of such lease. All spectrum leasing arrangements leases entered into after **[insert effective date of this rule]**, pursuant to the rules set forth in Parts 1 and 27, must comply with the rules in those parts.

Technical Standards

§ 27.1220 Transmission standards.

The width of a channel in the LBS and UBS is 5.5 MHz, with the exception of BRS channels 1 and 2 which are 6.0 MHz. The width of all channels in the MBS is 6 MHz. However, the licensee may subchannelize its authorized bandwidth, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel. The licensee may also, jointly with other licensees, transmit utilizing bandwidth in excess of its authorized bandwidth, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met and the out-of-band emissions restrictions set forth in Section 27.53 are met at the edges of the channels employed.

§ 27.1221 Interference Protection.

Interference protection will be afforded to BRS on a station by station basis based on the heights of the stations in the LBS and UBS and also on height benchmarking, although the heights of antennas utilized are not restricted.

(a) *Height Benchmarking.* Height benchmarking is defined for pairs of base stations, one in each of two neighboring service areas. The height benchmark for a particular station in a service area relative to a base station in an adjacent service area is the distance-squared between the station and the GSA service area boundary measured along the radial between the respective stations, divided by 17. That is, the height benchmark is $h_b = D^2/17$. Interference protection will be afforded on a station by station basis based on the actual antenna height above average terrain (HAAT) and this height benchmark.

(b) *Protection for a Receiving-Antenna not Exceeding the Height Benchmark:* A base station receive-antenna with an HAAT less than or equal to the height benchmark relative to a neighbor's transmitting base station will be protected if that station's HAAT exceeds its height benchmark. That station is required to take such measures to limit the undesired signal at the receiving base station to -107dBm or less.

(c) *No Protection from a Transmitting-Antenna not Exceeding the Height Benchmark:* A base station transmitting-antenna with an HAAT less than or equal to the height benchmark relative to a neighbor's receiving antenna is not required to protect that receiving station, regardless of the HAAT of that station.

(d) *No Protection for a Receiving-Antenna Exceeding the Height Benchmark:* A base station transmitting-antenna with an HAAT greater than the height benchmark relative to a neighbor's receiving antenna is not required to protect that receiving antenna if its HAAT is greater than its height benchmark.

§ 27.1222 Operations in the 2568-2572 and 2614-2618 bands.

All operations in the 2568-2572 and 2614-2618 MHz bands shall be secondary to adjacent-channel operations. Stations operating in the 2568-2572 and 2614-2618 MHz must not cause interference to licensees in operation in the LBS, MBS, and UBS and must accept any interference from any station operating in the LBS, MBS, and UBS in compliance with the rules established in this subpart. Stations operating in the 2568-2572 and 2614-2618 bands may cause interference to stations in operation in the LBS, MBS, and UBS if the affected licensees consent to such interference.

Policies Governing the Transition of the 2500-2690 MHz Band for BRS and EBS.**§ 27.1230 Conversion of the 2500-2690 MHz band.**

BRS and EBS licensees in the 2500-2690 MHz band on the pre-transition A-I Channels will be transitioned from the frequencies assigned to them under § 27.5(i)(1) to the frequencies assigned to them under § 27.5(i)(2) of this subpart. The transition, which will be undertaken by one or more proponent(s), will occur in the following five phases: initiating the transition process (see § 27.1231), planning the transition (see § 27.1232), reimbursing transition costs (see § 27.1233), terminating existing operations in transitioned markets that do not comport with § 27.5(i)(2) of this subpart (see § 27.1234), and filing the post-transition notification (see § 27.1235).

§ 27.1231 Initiating the transition.

(a) The transition will occur by MEA. MEAs are based on the U.S. Department of Commerce's 172 Economic Area (EAs). There are 52 MEAs composed of one or more EAs. Additionally, there are three EA-like areas: Guam and Northern Mariana Islands; Puerto Rico and the U.S. Virgin Islands; and American Samoa, which will also be transitioned to the band plan in Section 27.5(i)(2) of this subpart. The MEA associated with the Gulf of Mexico will not be transitioned. MEAs are identified in the Table to § 27.6(a) of this part.

(b) Sections 27.1231-27.1235 apply only to transitions initiated by a proponent(s) within 3 years of (INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER).

(c) When a proponent(s) is a Basic Trading Area (BTA) BRS licensee that is located in more than one MEA, the proponent(s) may elect to transition only one MEA or may elect to transition two or more MEAs that overlap the proponent(s)'s BTA.

(d) A proponent(s) may be an EBS or BRS licensee or an EBS lessee. To initiate a transition, a proponent(s) must submit the following information to the Commission at the Office of the Secretary in Washington, DC:

- (1) a list of the MEA(s) that the proponent(s) is transitioning;
- (2) a list by call sign of all of the BRS and EBS licensees in the MEA(s) that are being transitioned;
- (3) a statement indicating that the engineering analysis to transition all of the BRS and EBS licensees in the MEA(s) has been completed;

(4) a statement indicating when the transition will be completed;

(5) a statement indicating that an agreement has been concluded with the proponent(s) of the adjoining or adjacent MEA(s) when the engineering analysis indicates that a licensee or licensees in an adjacent or adjoining MEA must be transitioned to avoid interference to licensees in the MEA being transitioned, or in lieu of an agreement, the proponent(s) may provide an alternative means of transitioning the licensees in an adjacent or adjoining MEA;

(6) a statement indicating that an agreement has been concluded with another proponent(s) on how a MEA will be transitioned when there are two or more proponents seeking to transition the same MEA and a statement that identifies the specific portion of the MEA each proponent will be responsible for transitioning; and

(7) a certification that the proponent or joint proponents have the funds available to pay the reasonable expected costs of the transition based on the information contained in the Pre-Transition Data Request (see paragraph (f) of this section).

(e) A proponent(s) may, at its own discretion, withdraw from transitioning a MEA(s) by amending the information submitted to the Commission under paragraph (d) of this section and notifying all affected BRS and EBS licensees in the MEA(s).

(f) Pre-transition data request. To assist a potential proponent(s) in assessing whether to transition a MEA(s), a proponent(s) must send a Pre-transition data request to each EBS and BRS licensee in the MEA the proponent(s) seeks to transition. The proponent(s) shall include its full name, postal mailing address, contact person, e-mail address, and phone and fax numbers. The proponent(s) must request EBS and BRS licensees within a MEA to provide the following information to the potential proponent(s):

(1) The location (by street address and by geographic coordinates) of every constructed EBS receive site that, as of the date of receipt of the Pre-Transition Data Request, is entitled to a replacement downconverter (see § 27.1233(a) of this subpart). The response must:

(i) Specify whether the downconverting antenna is mounted on a structure attached to the building or on a free-standing structure;

(ii) Specify the approximate height above ground level of the downconverting antenna;

(iii) Specify, if known, the adjacent channel D/U ratio that can be tolerated by any receiver(s) at the receive site; and

(2) The number and identification of EBS video programming or data transmission tracks the EBS licensee is entitled to receive in the MBS and whether the EBS licensee will accept fewer tracks in the MBS (see § 27.1233(b) of this subpart).

(g) *The Transition Notice.* The proponent(s) must send a Transition Notice to all BRS and EBS licensees in the MEA(s) being transitioned. The proponent(s) must include the following information in the Transition Notice:

- (1) the proponent(s)'s full name; postal mailing address, contact person, e-mail address, and phone and fax numbers
- (2) the identification of the BRS and EBS licensees that will be transitioned;
- (3) copies of the most recent response to the Pre-Transition Data Request for each participant in the process; and
- (4) a certification that the proponent(s) has the funds available to pay the reasonably expected costs of the transition based on the information in the Pre-Transition Data Request.

§ 27.1232 Planning the Transition.

(a) *The Transition Planning Period.* The Transition Planning Period is a 90-day period that commences on the day after the proponent(s) file the Initiation Plan with the Commission.

(b) *The Transition Plan.* The proponent(s) must provide to each BRS and EBS licensee within a MEA, a Transition Plan no later than 30 days prior to the conclusion of the Transition Planning Period.

- (1) The Transition Plan must:
 - (i) identify the call signs of the stations that are transitioning;
 - (ii) identify the specific channels that each licensee will receive following the transition;
 - (iii) identify the receive sites at which replacement downconverters will be installed (see § 27.1233(a) of this subpart);
 - (iv) identify the video programming and data transmission tracks that will be migrated to the MBS and provide for the MBS channels to be authorized to operate with transmission parameters that are substantially similar to those of the licensee's operation prior to transition (see § 27.1233(b) of this subpart);
 - (v) identify the technical configuration of the MBS facilities;
 - (vi) identify the approximate time line for effectuating the transition, which, unless dispute resolution procedures are used, may not exceed 18 months from the conclusion of the Transition Planning Period;
 - (vii) provide for the establishment of an escrow or other appropriate mechanism for ensuring completion of the transition in accordance with the Transition Plan.

(2) The Transition Plan may provide for interruptions of EBS transmissions, so long as those interruptions are limited to a period of less than seven days at any reception site. The proponent(s) must coordinate with each EBS licensee to minimize the extent of any disruption.

(3) The Transition Plan may provide for the shifting of an EBS licensee's program to alternative channels. Such shifting may not be considered an interruption, if the EBS licensee's receive sites are

equipped to receive and internally distribute the channel to which the programming is shifted.

(4) The Transition Plan may provide for the installation of an appropriate filter on an MBS transmitter if the proponent(s) determines that the installation of a filter will mitigate interference from transmissions in the MBS to operations outside the MBS.

(d) *Counterproposals.* No later than 10 days before the conclusion of the Transition Planning Period, affected BRS and EBS licensees may submit a counterproposal to the proponent(s) if they believe that the Transition Plan is unreasonable. The proponent(s) may:

(1) accept the counterproposal, modify the Transition Plan accordingly, and send the modified Transition Plan to all EBS and BRS licensees in the MEA;

(2) invoke dispute resolution procedures for a determination of whether the Transition Plan is reasonable and take no action until a determination of reasonableness is made; or

(3) invoke dispute resolution procedures for a determination of whether the Transition Plan is reasonable, but may implement the transition immediately.

(e) *Safe harbors.* An offer by a proponent(s) shall be reasonable if it meets one of the following safe harbors:

(1) *Safe harbor #1.* This safe harbor applies when the default high-power channel assigned to each channel group is authorized to operate after the transition with the same transmission parameters (coordinates, antenna pattern, height of center radiation, EIRP) as the downstream facilities before the transition. If the proponent(s) does not propose a change in the geographic coordinates of the facilities (other than as necessary to conform the actual location with the Commission's Antenna Survey Branch database), the proponent may also propose the following to the extent consistent with this subpart:

(i) An increase in the height of the center of radiation of the transmission antenna or a decrease in such height of no more than 8 meters (provided that such change does not result in an increase in antenna support structure lease costs to the EBS licensee and the consent of the owner of the antenna support structure is obtained).

(ii) A change in the EIRP of the transmission system of up to 1.5 dB in any direction.

(iii) Digitization, precision frequency offset, or other upgrades to the EBS transmission or reception systems that allow the proponent(s) to invoke more advantageous interference protection requirements applicable to upgraded systems.

(2) *Safe harbor # 2.* This safe harbor applies when an EBS licensee has channel-shifted its single video programming or data transmission track to spectrum licensed to another licensee. Under Section 27.5(i)(2) of this subpart, that track must be on the high-power channel licensed to the EBS licensee upon completion of the transition. For example, before the transition, an A Group licensee might have shifted its EBS video programming to channel C1. If one of the pre-transition A Group channels is licensed with technical parameters substantially similar to those of pre-transition channel C1, the Transition Plan may provide for high-power channel A4 to be licensed with the same technical parameters as the pre-transition channel C1. However, if the pre-transition A Group channels are licensed to operate with technical parameters materially different from those of pre-transition channel

C1, the proponent(s) may:

(i) Arrange a channel swap with the licensee of the C Group so that the A Group licensee will receive high-power channel C4 (which will automatically be licensed with the same transmission parameters as the pre-transition channel C1) in exchange for channel A4.

(ii) Arrange for high-power channel A4 to operate with transmission parameters substantially similar to those of the pre-transition channel C1 (see paragraph (e)(1) of this section).

§ 27.1233 Reimbursement costs of transitioning.

(a) *Replacement downconverters.* The proponent(s) must install at every eligible EBS receive site a downconverter designed to minimize the reception of signals from outside the MBS.

(1) An EBS receive site is eligible to be replaced if:

(i) a reception system was installed at that site on or before the date the EBS licensee receives its Pre-Transition Data Request (see § 27.1231(f) of this subpart);

(ii) the reception system was installed by or at the direction of the EBS licensee;

(iii) the reception system receives EBS programming under § 27.1203(b) and (c) of this subpart or is located at a cable television system headend and the cable system relays educational or instructional programming for an EBS licensee; and

(iv) it is within the licensee's 35-mile radius GSA.

(2) Replacement downconverters must meet the following minimum technical requirements:

(i) The downconverter's input frequency range (the "in-band frequencies") must be 2572 MHz to 2614 MHz and output frequency range must be 294 MHz to 336 MHz;

(ii) The downconversion process must not invert frequencies;

(iii) The nominal gain of the downconverter must be 32 dB, or greater;

(iv) The downconverter must include filtering prior to the first amplifier that attenuates frequencies below 2500 MHz and above 2705 MHz by at least 25 dB;

(v) The downconverter must have an out-of-band input 3rd order intercept point (input IP3) of at least +9 dBm, where out-of-band is defined as all frequencies below 2566 MHz and all frequencies above 2620 MHz;

(vi) The downconverter must have a typical noise figure of no greater than 3.5 dB and a worst case noise figure of no greater than 4.5 dB across all in-band frequencies and across its entire intended operating temperature range;

(vii) The downconverter must not introduce a delta group delay of more than 20 nanoseconds for digital operations or 100 nanoseconds for analog operations over any individual six megahertz MBS

channel.

(b) *Migration of Video Programming and Data Transmission Track*

(1) The proponent(s) must provide, at its cost, to each EBS licensee that intends to continue downstream high-power, high-site educational video programming or data transmission services, with one programming track on the MBS channels for each EBS video or data transmission track the licensee is transmitting on a simultaneous basis before the transition.

(i) To be eligible for migration, a program track must contain EBS programming that complies with § 27.1203(b) and (c) of this subpart.

(ii) The proponent(s) must pay only the costs of migrating programming tracks being transmitted on December 31, 2002 or within six months prior thereto.

(2) The proponent(s) must migrate each eligible programming track to spectrum in the MBS that will be licensed to the affected licensee at the conclusion of the transition.

(3) After the transition, the desired-to-undesired signal level ratio at each of the receive sites securing a replacement downconverter must satisfy the following criteria:

(i) *Cochannel D/U Ratio.*

(A) When the post-transition desired signal is transmitted using analog modulation, the actual cochannel D/U ratio measured at the output of the reception antenna must be at least the lesser of 45 dB or the actual pre-transmission D/U ratio less 1.5 dB.

(B) When the post-transition desired signal will be transmitted using digital modulation, the actual cochannel D/U ratio measured at the output of the reception antenna must be at least the lesser of 32 dB or the pre-transition D/U ratio less 1.5 dB.

(C) Where in implementing the Transition Plan, the proponent(s) deploys precise frequency offset in an analog system, the minimum cochannel D/U ratio is reduced to 38 dB, provided that the transmitters have or are upgraded pursuant to the Transition Plan to have the appropriate "plus," "zero," or "minus" 10,010 Hertz precision frequency offset with a ± 3 Hertz (or better) stability.

(ii) *Adjacent Channel D/U Ratio.* The actual adjacent channel D/U must equal or exceed the lesser of 0 dB or the actual pre-transmission D/U ratio. However, in the event that the receive site uses receivers or is upgraded by the proponent(s) as part of the Transition Plan to use receivers that can tolerate negative adjacent channel D/U ratios, the actual adjacent channel D/U ratio at such receive site must equal or exceed such negative adjacent channel D/U ratio.

(c) *BRS Costs.* BRS licensees must pay their own transition costs. BRS licensees in the LBS or UBS must reimburse the proponent(s) a pro rata share of the cost of transitioning the facilities they use to provide commercial service, either directly or through a lease agreement with an EBS licensee.

§ 27.1234 Terminating existing operations in transitioned markets.

Licensees may discontinue operations during the transition.

§ 27.1235 Post-transition notification.

(a) The proponent(s) and all affected licensees must jointly notify the Commission at the Office of the Secretary, Washington DC, that the Transition Plan has been fully implemented.

(1) The notification must provide the identification of the licensees that have transitioned to the band plan in § 27.5(i)(2) this subpart and the specific frequencies on which each licensee is operating.

(2) For each station in the MBS, the notification must provide the following information:

- (i) the station coordinates,
- (ii) the make and model of each antenna,
- (iii) the horizontal and vertical pattern of the antenna;
- (iv) EIRP of the main lobe;
- (v) orientation;
- (vi) height of antenna center of radiation;
- (vii) transmitter output power;
- (viii) all line and combiner losses.

(3) The proponent(s) must provide copies of the post-transition notice to all parties of the transition.

PART 73--RADIO BROADCAST SERVICES

34. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334 and 336.

35. Section 73.1010(e) is amended by deleting paragraph 7 and redesignating paragraph 8 as paragraph 7.

36. The table at Section 73.3500(a) is amended by deleting the references to Form numbers 330, 330-L, and 330-R.

37. Section 73.3533(a) is amended by deleting paragraph 4 and redesignating paragraphs 5 through 8 as paragraphs 4 through 7.

38. Section 73.3534 is deleted and reserved.

39. Section 73.3536(b) is amended by deleting paragraph 4 and redesignating paragraphs 5 through 7 as paragraphs 4 through 6.

40. Section 73.5000 is amended by revising paragraph (a) to read as follows:

(a) Mutually exclusive applications for new facilities and for major changes to existing facilities in the following broadcast services are subject to competitive bidding: AM; FM; FM translator; analog television; low-power television; television translator; and Class A television. Mutually exclusive applications for minor modifications of Class A television and television broadcast are also subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in part 73 or part 74 of this chapter.

* * * * *

41. Section 73.5002 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 73.5002 Application and certification procedures; return of mutually exclusive applications not subject to competitive bidding procedures; prohibition of collusion.

a) Prior to any broadcast service auction, the Commission will issue a public notice announcing the upcoming auction and specifying the period during which all applicants seeking to participate in an auction, and all applicants for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), on non-reserved channels, must file their applications for new broadcast facilities or for major changes to existing facilities. Broadcast service applications for new facilities or for major modifications will be accepted only during these specified periods. This initial and other public notices will contain information about the completion and submission of applications to participate in the broadcast auction, and applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), on non-reserved channels, as well as any materials that must accompany the applications, and any filing fee that must accompany the applications or any upfront payments that will need to be submitted. Such public notices will also, in the event mutually exclusive applications are filed for broadcast construction permits that must be resolved through competitive bidding, contain information about the method of competitive bidding to be used and more detailed instructions on submitting bids and otherwise participating in the auction. In the event applications are submitted that are not mutually exclusive with any other application in the same service, or in the event that any applications that are submitted that had been mutually exclusive with other applications in the same service are resolved as a result of the dismissal or modification of any applications, the non-mutually exclusive applications will be identified by public notice and will not be subject to auction.

(b) To participate in broadcast service auctions, or to apply for a noncommercial educational station, as described in 47 U.S.C. 397(6), on a non-reserved channel, all applicants must timely submit short-form applications (FCC Form 175), along with all required certifications, information and exhibits, pursuant to the provisions of § 1.2105(a) of this chapter and any Commission public notices. So determinations of mutual exclusivity for auction purposes can be made, applicants for non-table broadcast services must also submit the engineering data contained in the appropriate FCC form (FCC Form 301, FCC Form 346, or FCC Form 349). Beginning January 1, 1999, all short-form applications must be filed electronically. If any application for a noncommercial educational broadcast station, as described in 47 U.S.C. 397(6), is

mutually exclusive with applications for commercial broadcast stations, and the applicants that have the opportunity to resolve the mutual exclusivity pursuant to paragraph (c) and (d) of this section fail to do so, the application for noncommercial educational broadcast station, as described in 47 U.S.C. 397(6), will be returned as unacceptable for filing, and the remaining applications for commercial broadcast stations will be processed in accordance with competitive bidding procedures.

(c) Applicants in all broadcast service auctions, and applicants for noncommercial educational stations, as described in 47 U.S.C. 397(6), on non-reserved channels will be subject to the provisions of § 1.2105(b) of this chapter regarding the modification and dismissal of their short-form applications. Notwithstanding the general applicability of § 1.2105(b) of this chapter to broadcast auctions, and applicants for noncommercial educational stations, as described in 47 U.S.C. 397(6), on non-reserved channels, the following applicants will be permitted to resolve their mutual exclusivities by making amendments to their engineering submissions following the filing of their short-form applications:

- (1) applicants for all broadcast services who file major modification applications that are mutually exclusive with each other;
- (2) applicants for all broadcast services who file major modification and new station applications that are mutually exclusive with each other; or
- (3) applicants for the secondary broadcast services who file applications for new stations that are mutually exclusive with each other.

(d) The prohibition of collusion set forth in § 1.2105(c) of this chapter, which becomes effective upon the filing of short-form applications, shall apply to all broadcast service auctions. Notwithstanding the general applicability of § 1.2105(c) of this chapter to broadcast auctions, the following applicants will be permitted to resolve their mutual exclusivities by means of engineering solutions or settlements during a limited period after the filing of short-form applications, as further specified by Commission public notices:

- (1) applicants for all broadcast services who file major modification applications that are mutually exclusive with each other;
- (2) applicants for all broadcast services who file major modification and new station applications that are mutually exclusive with each other; or
- (3) applicants for the secondary broadcast services who file applications for new stations that are mutually exclusive with each other.

* * * * *

42. Section 73.5003 is revised to read as follows:

* * * * *

§ 73.5003 Submission of full payments.

If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the

payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due. Broadcast construction permits licenses will be granted by the Commission following the receipt of full payment.

43. Section 73.5005 is amended by revising paragraph (a) to read as follows:

§ 73.5005 Filing of long-form applications.

(a) Within thirty (30) days following the close of bidding and notification to the winning bidders, each winning bidder must submit an appropriate long-form application (FCC Form 301, FCC Form 346, or FCC Form 349) for each construction permit or license for which it was the high bidder. Long-form applications filed by winning bidders shall include the exhibits required by § 1.2107(d) of this chapter (concerning any bidding consortia or joint bidding arrangements); § 1.2110(j) of this chapter (concerning designated entity status, if applicable); and § 1.2112 of this chapter (concerning disclosure of ownership and real party in interest information, and, if applicable, disclosure of gross revenue information for small business applicants).

* * * * *

44. Section 73.5006 is amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

§ 73.5006 Filing of petitions to deny against long-form applications.

a) As set forth in 47 CFR 1.2108, petitions to deny may be filed against the long-form applications filed by winning bidders in broadcast service auctions and against the long-form applications filed by applicants whose short-form applications were not mutually exclusive with any other applicant, or whose short-form applications were mutually exclusive only with one or more short-form applications for a noncommercial educational broadcast station, as described in 47 U.S.C. 397(6).

(b) Within ten (10) days following the issuance of a public notice announcing that a long-form application for an AM, FM or television construction permit has been accepted for filing, petitions to deny that application may be filed. Within fifteen (15) days following the issuance of a public notice announcing that a long-form application for a low-power television, television translator or FM translator construction permit has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. In the AM, FM and television broadcast services, the time for filing such oppositions shall be five (5) days from the filing date for petitions to deny, and the time for filing replies shall be five (5) days from the filing date for oppositions. In the low-power television, television translator and FM translator broadcast services, the time for filing such oppositions shall be fifteen (15) days from the filing date for petitions to deny, and the time for filing replies shall be ten (10) days from the filing date for oppositions.

(d) If the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, a public notice will be issued announcing that the broadcast construction permit(s) is ready to be granted, upon full payment of the balance of the winning bid(s). See 47 CFR 73.5003. Construction of broadcast stations shall not commence until the grant of such permit or license to the winning bidder.

45. Section 73.5007 is amended by deleting paragraph (b)(2)(vi) and revising paragraphs (b)(2)(iv) and (v) to read as follows:

§ 73.5007 Designated entity provisions.

* * * * *

(b)(2)

* * *

(iv) Cable television system--the franchised community of a cable system; and

(v) Daily newspaper--community of publication.

* * * * *

46. Section 73.5008 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) A medium of mass communications means a daily newspaper; a cable television system; or a license or construction permit for a television broadcast station, an AM or FM broadcast station, or a direct broadcast satellite transponder.

* * * * *

PART 74 -- EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

47. The authority citation for Part 74 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 307, and 554.

48. Section 74.1 is amended by revising paragraph (b) to read as follows:

§ 74.1 Scope.

* * * * *

(b) Rules in Part 74 which apply exclusively to a particular service are contained in that service subpart, as follows: Experimental Broadcast Stations, Subpart A; Remote Pickup Broadcast Stations, Subpart D; Aural Broadcast STL and Intercity Relay Stations, Subpart E; TV Auxiliary Broadcast Stations, Subpart F; Low-power TV, TV Translator and TV Booster Stations, Subpart G; Low-power Auxiliary Stations,

Subpart H; FM Broadcast Translator Stations and FM Broadcast Booster Stations, Subpart L.

49. Section 74.15 is amended by deleting paragraph (e) and redesignating paragraphs (f) and (g) as (e) and (f) respectively.

50. Section 74.703 is amended by revising paragraph (d) to read as follows:

§ 74.703 Interference.

* * * * *

d) When a low-power TV or TV translator station causes interference to a CATV system by radiations within its assigned channel at the cable headend or on the output channel of any system converter located at a receiver, the earlier user, whether cable system or low-power TV or TV translator station, will be given priority on the channel, and the later user will be responsible for correction of the interference. When a low-power TV or TV translator station causes interference to a BRS or EBS system by radiations within its assigned channel on the output channel of any system converter located at a receiver, the earlier user, whether BRS system or low-power TV or TV translator station, will be given priority on the channel, and the later user will be responsible for correction of the interference.

* * * * *

51. Section 74.832 is amended by revising paragraph (a) to read as follows:

§ 74.832 Licensing requirements and procedures.

(a) * * *

(6) Licensees and conditional licensees of stations in the Service and Multichannel Multipoint Distribution Service as defined in § 21.2 of this chapter, or entities that hold an executed lease agreement with an MDS or MMDS licensee or conditional licensee or with an Instructional Television Fixed Service licensee or permittee.

* * * * *

52. Subpart I is removed and reserved.

PART 76 - MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

53. The authority for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302a, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 531, 571, 572, and 573.

54. Section 76.64 is amended by revising paragraph (d) to read as follows:

§ 76.64 Retransmission consent.

* * * * *

(d) A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming.

* * * * *

55. Section 76.71 is amended by revising paragraph (a) to read as follows:

§ 76.71 Scope of application.

(a) The provisions of this subpart shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system. Cable entities subject to these provisions include those systems defined in § 76.5(a), all satellite master antenna television systems serving 50 or more subscribers, and any multichannel video programming distributor. For purposes of the provisions of this subpart, a multichannel video programming distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a video dialtone program service provider, who makes available for purchase, by subscribers or customers, multiple channels of video programming, whether or not a licensee. Multichannel video programming distributors do not include any entity which lacks control over the video programming distributed. For purposes of this subpart, an entity has control over the video programming it distributes, if it selects video programming channels or programs and determines how they are presented for sale to consumers. Notwithstanding the foregoing, the regulations in this subpart are not applicable to the owners or originators (of programs or channels of programming) that distribute six or fewer channels of commonly-owned video programming over a leased transport facility. For purposes of this subpart, programming services are "commonly-owned" if the same entity holds a majority of the stock (or is a general partner) of each program service.

* * * * *

56. Section 76.503 is amended by revising paragraph (e) to read as follows:

§ 76.503 National Subscriber Limits.

* * * * *

(e) "Multichannel video-programming subscribers" means subscribers who receive multichannel video-programming from cable systems, direct broadcast satellite services, direct-to-home satellite services, BRS/EBS, local multipoint distribution services, satellite master antenna television services (as defined in § 76.5(a)(2)), and open video systems.

* * * * *

57. Section 76.905 is amended by revising paragraph (d) to read as follows:

§ 76.905 Standards for identification of cable systems subject to effective competition.

* * * * *

(d) A multichannel video program distributor, for purposes of this section, is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dialtone service provider, or a satellite master antenna television service provider that makes available for purchase, by subscribers or customers, multiple channels of video programming.

* * * * *

58. Section 76.1000 is amended by revising paragraph (e) to read as follows:

§ 76.1000 Definitions

* * * * *

(e) Multichannel video programming distributor. The term "multichannel video programming distributor" means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

* * * * *

59. Section 76.1200 is amended by revising paragraphs (a) and (b) to read as follows:

§ 76.1200 Definitions.

As used in this subpart:

(a) Multichannel video programming system. A distribution system that makes available for purchase, by customers or subscribers, multiple channels of video programming other than an open video system as defined by § 76.1500(a). Such systems include, but are not limited to, cable television systems, BRS/EBS systems, direct broadcast satellite systems, other systems for providing direct-to-home multichannel video programming via satellite, and satellite master antenna systems.

(b) Multichannel video programming distributor. A person such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, or a television receive-only satellite program distributor, who owns or operates a multichannel video programming system.

* * * * *

60. Section 76.1300 is amended by revising paragraph (d) to read as follows:

§ 76.1300 Definitions.

* * * * *

(d) Multichannel video programming distributor. The term "multichannel video programming distributor" means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

* * * * *

PART 78 – CABLE TELEVISION RELAY SERVICE

61. The authority for Part 78 continues to read as follows:

AUTHORITY: 47 U.S.C. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

62. Section 78.1 is amended to read as follows:

§ 78.1 Purpose.

The rules and regulations set forth in this part provide for the licensing and operation of fixed or mobile cable television relay service stations (CARS) used for the transmission of television and related audio signals, signals of standard and FM broadcast stations, signals of BRS/EBS fixed stations, and cablecasting from the point of reception to a terminal point from which the signals are distributed to the public by cable. In addition CARS stations may be used to transmit television and related audio signals to TV translator and low-power TV stations.

63. Section 78.5 is amended by revising paragraph (j) to read as follows:

§ 78.5 Definitions.

* * * * *

(j) Other eligible system. A system comprised of microwave radio channels in the BRS/EBS spectrum (as defined in Subpart M of Part 27) that delivers multichannel television service over the air to subscribers.

* * * * *

64. Section 78.11 is amended by revising paragraph (a) to read as follows:

§ 78.11 Permissible service.

(a) CARS stations are authorized to relay TV broadcast and low-power TV and related audio signals, the signals of AM and FM broadcast stations, signals of BRS/EBS fixed stations, and cablecasting intended for use by one or more cable television systems or other eligible systems. LDS stations are authorized to relay television broadcast and related audio signals, the signals of AM and FM broadcast stations, signals of BRS/EBS fixed stations, cablecasting, and such other communications as may be authorized by the Commission. Relaying includes retransmission of signals by intermediate relay stations in the system. CARS licensees may interconnect their facilities with those of other CARS, common carrier, or television auxiliary licensees, and may also retransmit the signals of such CARS, common carrier, or television auxiliary stations, provided that the program material retransmitted meets the requirements of this paragraph.

* * * * *

65. Section 78.13 is amended by deleting paragraph (e), redesignating paragraph (f) as paragraph (e) and revising paragraph (d) to read as follows:

§ 78.13 Eligibility for license.

* * * * *

(d) Licensees and conditional licensees of channels in the BRS/EBS band as defined in § 27.5(i) of this chapter, or entities that hold an executed lease agreement with a BRS/EBS licensee or conditional licensee.

* * * * *

66. Section 79.1 is amended by revising paragraph (d) to read as follows:

§ 79.1 Closed captioning of video programming.

* * * * *

(d) * * *

(7) EBS programming. Video programming transmitted by an Educational Broadband Service licensee pursuant to part 27 of this chapter.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

67. The authority citation for Part 101 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303.

68. Section 101.101 is amended by deleting the reference to the 2150-2160 MHz frequency band.

69. Section 101.147 is amended by deleting the reference to the 2150-2160 MHz frequency band in paragraph (a), and by deleting and reserving paragraphs (e) and (g).

APPENDIX D
LIST OF COMMENTERS

Comments

Adams Telecom, Inc., Central Texas Communications, Inc., & Leaco Rural Telephone
Ad Hoc MMDS Licensee Consortium
Archdiocese of Los Angeles
Archdiocese of New York
Arraycomm, Inc.
Atlanta Interfaith Broadcasters
BellSouth Corporation and BellSouth Wireless Cable, Inc.
Catholic Television Network and National ITFS Association
Cellular Telecommunications & Internet Association
Colorado State University
Comspec Corporation
Dallas MDS Partners
Department of Education Archdiocese of New York
Diocese of Brooklyn
Earthlink, Inc.
The Education Community
Education Service Center Region 10
Ericsson, Inc.
Fixed Wireless Holdings, LLC
Grand Alliance
Grand Wireless Company
Hardin and Associates, Inc.
Hispanic Information and Telecommunications Network, Inc.
Illinois Institute of Technology
Independent MMDS Licensee Coalition
Information Technology Industry Council
Intel Corporation
IPWireless, Inc.
The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance
ITFS Parties
Lucent Technologies, Inc.
Michael Kelly Revocable Trust, d/a/a Shannondale Wireless
MMDS License Coalition
Motorola, Inc.
National Telecommunications Cooperative Association
Navini Networks, Inc.
Network for Instructional TV, Inc.
New America Foundation, et. al.
Nextnet Wireless, Inc.
NTCA
Ntelos, Inc.
Oklahoma Western Telephone Company, Inc.
PCIA
Rural Commenters

The School Board of Broward County
The School Board of Miami-Dade County, Florida
South Carolina Educational Television Commission
Spectrum Market, LLC
Sprint Corporation
Stanford University and Northeastern University
Teton Wireless Television, Inc.
Texas State Technical College, Harlingen
University of Colorado
Virginia Communications, Inc.
Wavetel, LLC
W.A.T.C.H. TV Company
Wireless Communications Association, International (WCA), National Instructional Television Fixed Service (NIA) and Catholic Television Network (CTN)
WH-TV, Inc. d/b/a Digital TV One
Winbeam, Inc.
Worldcom, Broadband Solutions, Inc.

Reply Comments

Adams Telecom, Inc., Central Texas Communications, Inc., & Leaco Rural Telephone
Alvarion
Gordon Archer
Arraycomm, Inc.
Atlanta Interfaith Broadcasters
BellSouth Corporation and BellSouth Wireless Cable, Inc.
Bway.Net, Inc.
California Amplifier, Inc.
Catholic Television Network and National ITFS Association
Celplan Technologies, Inc.
Clarendon Foundation
Comspec Corporation
Department of Education Archdiocese of New York
Digital TV One
The Education Community
Education Service Center Region 10
Fixed Wireless Holdings, LLC
Flarion Technologies, Inc.
Peter Frishauf
George Mason University Instructional Foundation, F Corporation, Michael Kelley Trust
Mary Gorman
Grand Alliance
Gryphon Wireless, LLC
Hispanic Information and Telecommunications Network, Inc.
Daniel Howe
Huntsville City Schools ETV
Intel Corporation
IPWireless, Inc.
The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance
ITFS Spectrum Development Alliance, Inc.

Rob Kelley
Joshua Kronengold
Sascha D. Meinrath
Microsoft Corporation
Milwaukee Area Technical College District Board
The Mississippi Ednet Institute, Inc.
Navini Networks, Inc.
Network for Instructional TV, Inc.
New America Foundation, et. al.
Nextnet Wireless, Inc.
Nextel Communications, Inc.
North Carolina Community Colleges
Nucentrix Broadband Networks, Inc.
NTELOS, Inc.
Michael Oh
Polar Communications Mutual Aid Corporation
Pamela Quinn
Rural Commenters
H. Michael Sanders
San Diego ITFS Licensees
SBC Communications
School Board of Broward County
The School Board of Miami-Dade County, Florida
Sioux Valley Wireless
Kurt A Snodgrass
Soma Networks
Spectrum Market, LLC
Sprint Corporation
Stanford University, Northeastern University, Diocese of Brooklyn
Teton Wireless Television, Inc.
Blake Twedt & John Dudeck
University of Arizona
University of South Florida
WH-TV, Inc., D/B/A Digital TV One
Tom Zachman

Ex Parte Comments

Shaun Abshire
Accel Net, Inc.
ACUTA, Inc.
Ad Hoc MMDS Licensee Consortium
Aircable America
Aircomm Associates/Nutec Communications, Inc.
Tommy Allmand
Anaheim City School District
Archbishop of Chicago
Archbishop of Los Angeles
Atlanta Interfaith Broadcasters, Inc.
Dr. Herb Berg

Robert J. Berger
Bishop of Dallas
Moss Bresnahan, President of South Carolina ETV
Donald Briggs
Scott Brooke
James W. Browder
Robert H. Bruininks
John Bucher
Carolyn Burrow
Catholic Television Network and National ITFS Association
Carolyn Bukhair
Christopher Casebeer
Charleston County School District
Clearwire Corporation
Jennifer Davis
Digital Broadcast Corporation
Education Community, Catholic Television Network, and National ITFS Association
Educational Institutions
Electronic Frontier Foundation
Jim Emal
Lisa Faas
Joe Farmer
Robert J. Fear
Sidnie Feit
Tom Fletcher
Friends of WLRN, Inc.
George Mason University Instructional Foundation
W. Scott Gerstenberger
Alexander Gonzalez, President, California State University-Sacramento
Jim Gottlieb
John Haeger
Elisabeth Hall
Mike Hammett
Lenn Hann
Hawkeye Community College
HITV, Hernando County School Board
Joanne Hugi
Huntsville City Schools ETV Center
Illinois Institute of Technology & Stanford University
Information Technology Industry Council
Intel Corporation
Interested Education Parties
International Society for Technology in Education and Consortium for School Networking
IPWireless
Dr. Michael R. Kelley
Kirkwood Community College
H. Martin Lancaster, NC Community College System
Michael Lannon
Last Mile Wireless

Jack Lemley
Luxon Wireless
Sandy Maddox
Ed Mass
Mark McAllister
Allen McDaniel
Mary McLaughlin
Charles McMickle
Media Access Project
Stephen Merrill
Miami-Dade County Public Schools
Michiana Wireless
Minnesota Network Services
Missouri Southern State University
Mountain State College
Navini Networks, Inc.
Network For Instructional TV, Inc.
Nextel Communications, Inc.
New America Foundation, *et. al.*
Oregon Wireless Instructional Network
Oswalt Systems, Inc.
Hartwell Pendergrass
Private Networks, Inc.
Pamela K. Quinn
QwikWire.NET
Reliable Internet Services
James R. Richburg, President Okaloosa-Walton Community College
Connie Rodriguez
Rural Ramp
The School Board of Broward County
Mathew Schroebe
John Scrivner - Mt. Vernon. Net, Inc.
Fred Seitz
Sanford C. Shugart
Sioux Valley Wireless
Sprint Corporation
Stanford University
Statewide Internet Services
Texas ISP Association
Tim Steele
Kevin Sullivan
Tarrant County College District
Teton Wireless Television, Inc.
Troy Thoele - Cybercom Wireless
Traer Municipal Utilities
University of Cincinnati, Raymond Walters College, Dean Dolores Y. Straker
Steve H. Updegrove
WATCH TV Company
Webpipe.net, Inc.

James E. Wesner, University of Cincinnati
Gary Williams
Wireless Communications Association, International
Bill Wisneski
WISPA
Zirkel Wireless - Sean Heskett
Peter Zoller

APPENDIX E

DISMISSED MUTUALLY EXCLUSIVE ITFS APPLICATIONS

MX-

groupings	Name	Group	Location
19920402DL	Hillsdale Community Schools	A	Albion, MI
19920402DM	Jonesville Community School	B	Albion, MI
19920717DA	Michigan Center School Dist.	A	Jackson, MI
19920717DB	Concord Community School	B	Jackson, MI
19920825DE	Clarendon Foundation	A	Baton Rouge, LA
19920917DB	Views on Learning	B	Baton Rouge, LA
	ABG Foundation Nebraska		
19920925DE	Chapter, Inc.	D	Omaha, NE
	Louisiana Educational TV		
19931228DJ	Authority	A	Plaquemine, LA
19931228DA	The Fd Ex LA Pub	C	Plaquemine, LA
19931230DU	Creighton University	D	Omaha, NE
	WBSWP Licensing Corporation		
9550910	(MDS, MX with ITFS)	H	Boynton Beach, FL
19950524DD	Florida Atlantic University	C	Palm Beach, FL
	The School Board of Dade		
19950915HW	County, Florida	F/G	Miami, FL
	Instructional Telecommunications		
19950912DO	Foundation, Inc.	C	Salt Lake City, UT
19950914LC	Verde Valley School	D	Casa Grande, AZ
19951016AQ	Hispanic Info Telecom Network	D	Casa Grande, AZ
19951016AV	Hispanic Info Telecom Network	B	Bloomington, GA
19951016BJ	Hispanic Info Telecom Network	C	Santa Rosa, CA
19951017AM	Shekinah Network	B	Eureka, CA
19951018AD	Canyon County School	B	Boise, ID
19951019CC	CA State University Northridge	A/B	Santa Barbara
	North American Catholic		
	Educational Programming		
19951020AG	Foundation, Inc.	A	Eureka, CA
19951020AT	Santa Maria Joint Union HS	A/B	Santa Ynez, CA
19951020BC	The Delta-Montrose AVTC	B	Delta, CO
19951020BI	Tulane University of LA	A	Monroe, LA
19951020BL	Ft Hayes St University	A	Great Bend, KS
19951020ET	Hispanic Info Telecom Network	B	Boise, ID
19951020FM	Santa Rosa Junior College	C	Santa Rosa, CA
19951020GG	Hispanic Info Telecom Network	G	Billings, MT
19951020GI	Hispanic Info Telecom Network	B	Salinas, CA
19951020HK	LA Educational TV Auth	A	Delhi, LA
19951020KF	Chicago Inst Tech Td Inc	D	University PK, IL
	North American Catholic		
19951020LD	Educational Programming	G	Alamosa, CO

19951020LM	Foundation, Inc. The Clarendon Foundation North American Catholic Educational Programming	C	Ukiah, CA
19951020NE	Foundation, Inc.	B	Delta, CO
19951020PK	The Information Res F	B	Grand Junction, CO
19951020PP	LA Educational TV Authority	A	Monroe, LA
19951020PZ	Views on Learning, Inc.	A	Eureka, CA
19951020QT	Hartnell Community College	B	Salinas, CA
19951020RB	Cornerstone Christian SS Inc.	A	Grand Junction, CO
19951020SG	Delta Cty Joint School D #51	A	Delta, CO
19951020SN	Provo School District	C	Provo, UT
19951020SQ	St. Bede Academy	D	Ottawa, IL
19951020SV	Unified Sch Dist 489	A	Hayes, KS
19951020WP	Hispanic Info Telecom Network	G	Alamosa, CO
19951020XT	Board of Education for Savannah	B	Bloomington, GA
19951020ZR	Yellowstone ED Cnt	G	Billings, MT
19951020GE	Currituck County Board of Education	D	Hertford, NC
19951020E2	Elizabeth City State University	D	Elizabeth City, NC
19951020UH	Roanoke Bible College	B	Elizabeth City, NC
19951020S5	Univ of NC General Admin	B	Chapel Hill, NC

APPENDIX F

DISMISSED PLEADINGS RELATING TO MUTUALLY EXCLUSIVE ITFS APPLICATIONS

File No.	Applicant	Petitioner	Type Pleading	of	Date Pleading Filed
19920402DL	Hillsdale Community Schools	Wireless Cable, Inc.	Petition Deny	to	2/19/1993
19920402DM	Jonesville Community Schools	Wireless Cable, Inc.	Petition Deny	to	2/19/1993
19920717DA	Michigan Center School District	Hillsdale Community Schools	Petition Deny	to	2/5/1993
19951020SN	Provo School District	Instructional Telecommunications Foundation, Inc.	Petition Deny	to	7/11/1997
19920925DE	ABG Foundation, Nebraska Chapter, Inc.	USA Wireless Cable, Inc.	Petition Deny	to	12/30/1993
9550910	WBSWP Licensing Corp.	WBSWP Licensing Corp.	Waiver Request		5/24/1995
19950915HW	The School Board of Dade County, Florida	The School District of Broward County, Florida	Petition Deny	to	11/1/1996
19950524DD	Florida Atlantic University	The School Board of Dade County, Florida	Petition Deny	to	11/1/1996

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Education and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands (WT Docket No. 03-66); et al., Report and Order and Further Notice of Proposed Rulemaking.

We are witnessing the dawn of a new era for wireless broadband. Today's decision does away with heavy-handed rules that have governed the MDS/ITFS band ("2.5 GHz band") for far too long. Freed from regulatory shackles, educational institutions will now have the flexibility to utilize their spectrum in the way most advantageous to the students and the public they serve.

The magnitude of today's ruling is apparent when one considers that this band is *double* the spectrum that sparked the WiFi explosion at 2.4 GHz and equivalent to the entire spectrum devoted to terrestrial mobile, wireless services. Until now, 2.5 GHz has failed to emulate the successes experienced by these other bands.

This Order gives ITFS and the newly named Broadband Radio Service (BRS) licensees new options for developing and deploying innovative technologies including low-power, mobile wireless broadband technologies. These systems will provide a competitive alternative to cable modem and DSL service and will transform the marketplace by expanding broadband rural areas and decreasing the price of current broadband services.

In addition, this Order offers more choices to educational institutions. Under these new rules, licensees can choose to continue delivering high-powered educational television, develop new instructional uses over the ITFS spectrum, or lease excess capacity to commercial operators to fund alternative educational delivery methods. It's up to them to decide what makes the most sense to serve their community.

Today's decision is yet another milestone in this drive to expand the advanced broadband services nationwide. By promoting education, competition, innovation, and broadband deployment today's decision helps benefit us all.

Lastly, I would like to express my sincere gratitude to the Wireless Bureau staff who worked many long hours to resolve the difficult issues presented in this proceeding. I'd also like to thank everyone who participated in this proceeding, my esteemed colleagues, the agency Bureaus, educators, and the industry, for their comments and insightful proposals.

**SEPARATE STATEMENT OF
FCC COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2650 MHz Bands; et al., WT Docket No. 03-66, Report and Order and Further Notice of Proposed Rulemaking

With this order the Commission furthers two critical goals; maximizing the efficient use of the spectrum resource and facilitating the deployment of broadband services to all Americans. While many MMDS and ITFS licensees currently provide very valuable services to the public, it appears that these services have not yet reached their full potential and some of the spectrum remains underutilized. Licensees have repeatedly told us that regulatory hurdles thwart their attempts to deploy the new, innovative services demanded by the market.

This order responds directly to a proposal from the ITFS and MMDS industries for major revision of current regulations. Our intent is to ensure these services will no longer be hindered by outdated and overly restrictive regulation. While we have not adopted the industry proposal in total, we have used it as a solid basis for many of the rule changes we adopt today. These new policies will promote greater flexibility for the newly named Broadband Radio Service (BRS) licensees so that they can deploy new products, such as a third broadband pipe to the home, a mobile solution, a broadcast alternative, or some other service, as driven by the market. In addition, this order grants the educational community the same flexibility as commercial users in order to ensure that our nation's educators have access to the most innovative technologies and services.

As BRS and ITFS licensees transition to our new band plan, I look forward to receiving the upcoming reports from the Wireless Telecommunications Bureau which will monitor and evaluate the use of the band to ensure that the spectrum is being used efficiently and effectively.

Finally, I want to thank all the parties that participated in this proceeding for their cooperation and input, as well as the staff of the Wireless Telecommunications Bureau for their tireless work to quickly resolve the many issues presented to us in this proceeding.

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

RE: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Use of the Universal Licensing System in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules – Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico (Report and Order and Further Notice of Public Rulemaking)

Today we take a major step toward providing stability in the MMDS and ITFS band. We establish a new band plan that separates high-power operations from low-power operations. We create a transition mechanism designed to move us from the current plan to a new three-part band plan. And, most importantly, we resolve with finality the question of ITFS eligibility. ITFS licenses are, and will continue to be, reserved for educators. Uncertainty on all these matters has created a confusing environment for too long, and it has held back needed investment. But now 1,275 ITFS licensees in 70,000 locations have the stability they need to make the most of this spectrum. I thank the Chairman and my colleagues for making this the case.

So now our ITFS and MMDS licensees can fully demonstrate to the Commission that with this stability they will build out their systems. Many licensees are already doing incredible work and making efficient and intensive use of the spectrum. Others are not, but now they have the opportunity—and the obligation—to do so. The Bureau has been tasked with reporting to the Commission on progress on the transition and on the intensity of use of the band. While we all understand that the dislocations caused by the transition will have an impact on deployment schedules, every licensee must work hard to ensure that they move forward and put this valuable spectrum to use rapidly. There are many who believe that MMDS and ITFS licensees will not use the spectrum efficiently. I think they are wrong. This is your chance, licensees, to prove the skeptics wrong.

The best ITFS licensees provide an example of how the public's spectrum can truly be used to serve the public interest. Children are educated. Distance learning is enabled. Rural access becomes a reality. Let's make the best of ITFS the rule for the whole band.

Thanks to the Bureau and thanks again to my colleagues for all the hard work on this difficult item. I believe that our collaboration has produced very positive results.

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 03-66 et al.

I am pleased to support this item, which initiates a fundamental restructuring of the Instructional Fixed Service (ITFS), Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS) band. Based on broad support from the affected parties, this item provides a home for both high-power and low-power operations and thereby gives users greatly enhanced flexibility. This approach preserves the ability of users to provide traditional video and other services, while also significantly promoting broadband deployment. Indeed, I am optimistic that this spectrum will provide a home for last-mile broadband applications, providing competition to telephone and cable lines. In the end, consumers will benefit from innovative services and lower prices.

I am also particularly pleased that we retained the requirement that ITFS spectrum be held by educational institutions and organizations. Encouraging and supporting education is a crucial value to our society, and that value is reflected in the reservation of spectrum for educational users. While some argue that educational spectrum is currently not being used efficiently, we must remember that this spectrum has been under the cloud of major proposed changes for a number of years. Now that a plan for restructuring the band is in place, we should give educators the opportunity and encouragement to move forward.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; WT Docket No. 03-66; et al.

The Communications Act places an obligation on the Commission to encourage the investment in and rapid deployment of new technologies. In today's Order, we hopefully meet that obligation by adopting rules that provide a framework for innovation in the BRS and ITFS services. Our rules accommodate the latest technologies and will facilitate the provision of broadband over wireless, a potential third pipe to the home. It is no secret that the BRS and ITFS services have had a tortured regulatory history. Today we establish a policy regime that will finally bring these services squarely into the 21st century.

The changes we are making today rightly recognize the potential of the 2496-2690 MHz band and take advantage of its capabilities. I am most excited about the future use of the spectrum for broadband services, both commercial and educational. I am a strong believer in the future and the potential of broadband communications. Broadband has the power to transform the lives of individuals and the future of communities. I believe that wireless solutions will play an important role in the future for broadband deployment especially in rural areas. Today's Order recognizes this and implements the means to promote advanced wireless services.

I also am pleased that we reaffirm today that there is a continued role for educators in this spectrum band. For forty years, ITFS providers have used this spectrum for educational programming. It would be wrong to phase out the role of educators at the same time we radically change the structure of the band. Stanford University, my own alma mater, has been licensed to operate as an ITFS system for over thirty years. The university transmits more than 350 programming hours a week. Stanford provides instructional coursework to thousands of graduate students throughout the Bay Area and works closely with many in the high tech community to ensure that their employees have the best education possible.

As we transition to broadband, we need to consider the important work of educators using ITFS like Stanford. And we also need to consider the impact of the transition on those incumbents who are providing video and broadband services in smaller markets throughout the country. I have worked hard to ensure as smooth a transition as possible for ITFS and MDS incumbents, and thank my colleagues for their support in accommodating a number of my revisions. I am also pleased that the Commission has asked for a series of reports that will give details on the progress of the transition process and will comment on some of the lessons learned as we undertake this novel effort.

I am disappointed, though, that the Order moves forward with a transition process that is based on major economic areas (MEAs). The BRS and ITFS services are local services, and I believe that broadband deployment for the foreseeable future will be rolled out on a relatively localized basis. I am concerned that the obligation to transition an entire MEA will make it exceedingly difficult for proponents to effectuate transitions in their particular market.

Finally, I want to thank the Wireless Telecommunications Bureau for all of their time and hard work spent on this monumental item. This Order represents a significant step by the Commission to ensure that providers continue to have opportunities to deploy broadband so that all consumers across America have access to the best communications possible.